IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.Rev.Pet.No. 3631 of 2007()

CP.17/2007 of JUDL.MAGISTRATE OF FIRST CLASS, ETTUMANUR

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REVN. PETITIONER: ACCUSED

BABU DEVASYA @ BABU, AGED 48 YEARS,
S/O. DEVASYA, PADINJAREKALAYIL HOUSE,
KUMARANELLOOR P.O., KOTTAYAM.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT - STATE

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3631 OF 2007

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Dated this the 9th day of October, 2007.

ORDER

The revision petitioner, who is the accused in Crime No.85/2007 of Gandhi Nagar Police Station for offences punishable under Sections 304 and 338 IPC, seeks to quash the order dated 11.07.2007 in C.P. No. 17/2007 passed by the Judicial First Class Magistrate, Ettumanoor issuing process to the revision petitioner/accused.

2. The case of the prosecution can be summarised as follows:

On 18.02.2007 at about 7.15 p.m. the accused drove the motor car bearing registration No.KL.5/X/3949 in a rash and negligent manner, endangering human life at a high speed and dashed against Sivaji a relative of the de facto complainant and his friend while proceeding along Ambalakkavala-Medical College Hospital Road. Both Sivaji and his friend were injured as a result of the occurrence and Sivaji succumbed to the fatal injuries sustained by him and his friend sustained injuries including

grievous hurt. The accused has thereby committed offences punishable under Sections 304 and 338 IPC.

3. The learned counsel for the revision petitioner submitted that this is a case of rash and negligent driving pure and simple and there is absolutely no motive or intention alleged for the commission of culpable homicide and no such motive or intention is discernible either from the charge sheet or from materials produced along with the charge sheet and the police were dishonestly inserting section 304 IPC instead of 304(A) IPC only to make it appear that a sessions offence has been committed. According to the revision petitioner, since the committal court has already take cognizance of the offence punishable under Section 304 IPC as well and has initiated committal proceedings by registering the case as C.P. No. 17/2007, the revision petitioner cannot now canvass for a lesser offence before the Magistrate and that is why he is before this Court.

4. The above contention of the revision petitioner on the merits appears to be prima facie tenable in the light of the decision of the Apex Court reported in **Prabhakaran v. State of**

Kerala (2007(3) KLT 400). But the question is whether this Court should entertain the above contention after undertaking an examination of the entire material forwarded by the prosecution. It may be true that the committal Magistrate cannot go back to the pre-cognizance stage. But, then the revision petitioner has got the remedy of canvassing the very same contention when the matter comes before the Sessions Court for preliminary hearing under Section 227 Cr.P.C after committal under Section 209 Cr.P.C. If he is able to convince the Sessions Judge that there is no ground to presume that the accused has committed the offence of culpable homicide punishable under Section 304 IPC and that the offence which is made out is only one punishable under section 304 A IPC which is not exclusively triable by a court of Session, the Sessions Court can entertain that contention and frame a charge against the accused and transfer the case either to the Chief Judicial Magistrate or to the appropriate Judicial Magistrate of First Class for trial in exercise of his power under Section 228(1)(a) Cr.P.C. When the revision petitioner has got such an efficacious remedy in law, I do not think that this

Court should exercise the revisional power at this stage. This revision is accordingly dismissed without prejudice to the right of the petitioner to raise the above contention before the Sessions Judge during the preliminary hearing under Section 227 Cr.P.C.

V. RAMKUMAR, JUDGE.

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